

AMENDED IN ASSEMBLY JUNE 6, 2007

AMENDED IN ASSEMBLY MAY 21, 2007

AMENDED IN ASSEMBLY MAY 3, 2007

AMENDED IN ASSEMBLY APRIL 18, 2007

AMENDED IN ASSEMBLY APRIL 9, 2007

CALIFORNIA LEGISLATURE—2007–08 REGULAR SESSION

ASSEMBLY BILL

No. 800

**Introduced by Assembly Members Lieu, Brownley, and Krekorian
(Coauthors: Assembly Members Beall, Karnette, and Mendoza)**

February 22, 2007

An act to amend Section 5411.5 of, and to add Section 5411.6 to, the Health and Safety Code, and to amend Section 13271 of the Water Code, relating to water.

LEGISLATIVE COUNSEL'S DIGEST

AB 800, as amended, Lieu. Discharge of hazardous substance, sewage, or other waste: notification.

(1) Existing law generally requires a person who, without regard to intent or negligence, causes or permits any sewage or other waste, or the effluent of treated sewage or other waste, to be discharged in or on any waters of the state, or discharged in or deposited where it is, or probably will be, discharged in or on any waters of the state, as soon as that person has knowledge of the discharge, to immediately notify the local health officer or the director of environmental health of the discharge. A person who fails to notify in accordance with these requirements is guilty of a misdemeanor that is punishable by a fine

that is not less than \$500 nor more than \$1,000, or imprisonment for less than one year, or both.

~~This bill, instead, would provide that a person who fails to give notice in accordance with these requirements is guilty of a misdemeanor that is punishable by a fine of not less than \$500 nor more than \$5,000 or imprisonment in a county jail for less than one year, or both. The bill would also subject that person to a civil penalty in an amount not to exceed \$1,000. The bill would provide that a person who willfully violates, or knowingly or intentionally fails to notify in accordance with these requirements is guilty of a misdemeanor that is punishable by a fine of not more than \$20,000 or imprisonment in a county jail for up to one year, or both. The bill would also subject that person to a civil penalty in an amount not to exceed \$5,000.~~

(2) The Porter-Cologne Water Quality Control Act generally requires a person who causes or permits any hazardous substance or sewage to be discharged in or on any waters of the state, as soon as that person has knowledge of the discharge and other requirements are met, to immediately notify the Office of Emergency Services of the discharge in accordance with specified spill reporting requirements. The act requires the Office of Emergency Services to immediately notify the appropriate California regional water quality control board and the local health officer and administrator of environmental health of the discharge. A person who fails to notify in accordance with these requirements, with a certain exception, is guilty of a misdemeanor that is punishable by a fine of not more than \$20,000, imprisonment for not more than one year, or both.

~~This bill would exempt a person from criminal liability imposed under both the provision cited in (1) and the provision of the Porter-Cologne Water Quality Control Act cited above, for the same act or failure to act provide that notification pursuant to these provisions does not nullify a person's responsibilities pursuant to (1) above.~~

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 ~~SECTION 1. Section 5411.5 of the Health and Safety Code is~~
- 2 ~~amended to read:~~
- 3 ~~5411.5. (a) Any person who, without regard to intent or~~
- 4 ~~negligence, causes or permits any sewage or other waste, or the~~

1 effluent of treated sewage or other waste to be discharged in or on
2 any waters of the state, or discharged in or deposited where it is,
3 or probably will be, discharged in or on any waters of the state, as
4 soon as that person has knowledge of the discharge, shall
5 immediately notify the local health officer or the director of
6 environmental health of the discharge.

7 (b) Except as provided in subdivision (c), any person who fails
8 to provide the notice required by this section is guilty of a
9 misdemeanor, and shall be punished by a fine of not less than five
10 hundred dollars (\$500) nor more than five thousand dollars
11 (\$5,000) or imprisonment in a county jail for less than one year,
12 or both.

13 (c) Any person who willfully violates, or knowingly or
14 intentionally fails to provide the notice required by this section is
15 guilty of a misdemeanor, and shall be punished by a fine of not
16 more than twenty thousand dollars (\$20,000) or imprisonment in
17 a county jail for less than one year, or both.

18 (d) The notification required by this section shall not apply to
19 a discharge authorized by law and in compliance with waste
20 discharge requirements or other requirements established by the
21 appropriate regional water quality control board or the State Water
22 Resources Control Board.

23 (e) A person shall not be subject to criminal liability imposed
24 pursuant to this section and to criminal liability imposed pursuant
25 to Section 13271 of the Water Code for the same act or failure to
26 act.

27 SEC. 2. Section 5411.6 is added to the Health and Safety Code,
28 to read:

29 5411.6. (a) Except as provided in subdivision (b), a person
30 who, without regard to intent or negligence, fails to provide the
31 notice required by Section 5411.5 is subject to a civil penalty
32 imposed by the court in an amount not to exceed one thousand
33 dollars (\$1,000).

34 (b) A person who willfully violates, or knowingly or
35 intentionally fails to provide the notice required by Section 5411.5
36 is subject to a civil penalty imposed by the court in an amount not
37 to exceed five thousand dollars (\$5,000).

38 (c) The remedies described in this section are in addition to,
39 and do not supersede or limit, any other civil or criminal remedy.

1 ~~SEC. 3.~~

2 ~~SECTION 1.~~ Section 13271 of the Water Code is amended to
3 read:

4 13271. (a) (1) Except as provided by subdivision (b), any
5 person who, without regard to intent or negligence, causes or
6 permits any hazardous substance or sewage to be discharged in or
7 on any waters of the state, or discharged or deposited where it is,
8 or probably will be, discharged in or on any waters of the state,
9 shall, as soon as (A) that person has knowledge of the discharge,
10 *(B) notification is possible, and (C) notification can be provided*
11 *without substantially impeding cleanup or other emergency*
12 *measures*, immediately notify the Office of Emergency Services
13 of the discharge in accordance with the spill reporting provision
14 of the state toxic disaster contingency plan adopted pursuant to
15 Article 3.7 (commencing with Section 8574.16) of Chapter 7 of
16 Division 1 of Title 2 of the Government Code.

17 (2) The Office of Emergency Services shall immediately notify
18 the appropriate regional board, the local health officer, and the
19 director of environmental health of the discharge. The regional
20 board shall notify the state board as appropriate.

21 (3) Upon receiving notification of a discharge pursuant to this
22 section, the local health officer and the director of environmental
23 health shall immediately determine whether notification of the
24 public is required to safeguard public health and safety. If so, the
25 local health officer and the director of environmental health shall
26 immediately notify the public of the discharge by posting notices
27 or other appropriate means. The notification shall describe
28 measures to be taken by the public to protect the public health.

29 (b) The notification required by this section shall not apply to
30 a discharge in compliance with waste discharge requirements or
31 other provisions of this division.

32 (c) Any person who fails to provide the notice required by this
33 section is guilty of a misdemeanor and shall be punished by a fine
34 of not more than twenty thousand dollars (\$20,000) or
35 imprisonment in a county jail for not more than one year, or both.
36 Except where a discharge to the waters of this state would have
37 occurred but for cleanup or emergency response by a public agency,
38 this subdivision shall not apply to any discharge to land which
39 does not result in a discharge to the waters of this state.

1 (d) Notification received pursuant to this section or information
2 obtained by use of that notification shall not be used against any
3 person providing the notification in any criminal case, except in
4 a prosecution for perjury or giving a false statement.

5 (e) For substances listed as hazardous wastes or hazardous
6 material pursuant to Section 25140 of the Health and Safety Code,
7 the state board, in consultation with the Department of Toxic
8 Substances Control, shall by regulation establish reportable
9 quantities for purposes of this section. The regulations shall be
10 based on what quantities should be reported because they may
11 pose a risk to public health or the environment if discharged to
12 groundwater or surface water. Regulations need not set reportable
13 quantities on all listed substances at the same time. Regulations
14 establishing reportable quantities shall not supersede waste
15 discharge requirements or water quality objectives adopted
16 pursuant to this division, and shall not supersede or affect in any
17 way the list, criteria, and guidelines for the identification of
18 hazardous wastes and extremely hazardous wastes adopted by the
19 Department of Toxic Substances Control pursuant to Chapter 6.5
20 (commencing with Section 25100) of Division 20 of the Health
21 and Safety Code. The regulations of the Environmental Protection
22 Agency for reportable quantities of hazardous substances for
23 purposes of the Comprehensive Environmental Response,
24 Compensation, and Liability Act of 1980, as amended (42 U.S.C.
25 Sec. 9601 et seq.) shall be in effect for purposes of the enforcement
26 of this section until the time that the regulations required by this
27 subdivision are adopted.

28 (f) (1) The state board shall adopt regulations establishing
29 reportable quantities of sewage for purposes of this section. The
30 regulations shall be based on the quantities that should be reported
31 because they may pose a risk to public health or the environment
32 if discharged to groundwater or surface water. Regulations
33 establishing reportable quantities shall not supersede waste
34 discharge requirements or water quality objectives adopted
35 pursuant to this division. For purposes of this section, "sewage"
36 means the effluent of a municipal wastewater treatment plant or a
37 private utility wastewater treatment plant, as those terms are
38 defined in Section 13625, except that sewage does not include
39 recycled water, as defined in subdivisions (c) and (d) of Section
40 13529.2.

1 (2) A collection system owner or operator, as defined in
2 paragraph (1) of subdivision (a) of Section 13193, in addition to
3 the reporting requirements set forth in this section, shall submit a
4 report pursuant to subdivision (c) of Section 13193.

5 (g) Except as otherwise provided in this section and Section
6 8589.7 of the Government Code, a notification made pursuant to
7 this section shall satisfy any immediate notification requirement
8 contained in any permit issued by a permitting agency. When
9 notifying the Office of Emergency Services, the person shall
10 include all of the notification information required in the permit.

11 (h) For the purposes of this section, the reportable quantity for
12 perchlorate shall be 10 pounds or more by discharge to the
13 receiving waters, unless a more restrictive reporting standard for
14 a particular body of water is adopted pursuant to subdivision (e).

15 (i) Notification under this section does not nullify a person's
16 responsibility to notify the local health officer or the director of
17 environmental health pursuant to Section 5411.5 of the Health and
18 Safety Code.

19 ~~(j) A person shall not be subject to criminal liability imposed~~
20 ~~pursuant to this section and to criminal liability imposed pursuant~~
21 ~~to Section 5411.5 of the Health and Safety Code for the same act~~
22 ~~or failure to act.~~